

No. 12-1570 RV

1. Hutson resided within the city limits of Columbia, Missouri, in 2010.

2. On April 3, 2010, Hutson purchased a motor vehicle, a 2010 Nissan (“the Nissan”), for a net price of \$23,879.00 from a motor vehicle dealer in Missouri.<sup>1</sup>

3. On May 3, 2010, Hutson registered the Nissan at a license office (“the license office”).

4. Although Hutson provided his correct address to the license office when he registered the Nissan, the license office determined that he owed Boone County local sales tax -- 1.125 % -- on his purchase of the Nissan instead of City of Columbia local sales tax, which is 3.125 %.

5. Thus, Hutson paid Missouri state sales tax on the net purchase price of the Nissan in the amount of \$1,008.89, reflecting the State’s sales tax rate of 4.225%, and Boone County sales tax on the net purchase price of the Nissan in the amount of \$268.64.

6. The City of Columbia audited the license office. The audit determined that Hutson had paid local sales tax at the lower rate imposed by Boone County, instead of the higher rate applicable in the City of Columbia, on his vehicle purchase.

7. On June 22, 2012, the Director issued a final decision assessing Hutson additional local sales tax in the amount of \$477.58 – the difference between the local sales tax in Columbia (\$746.22) and the local sales tax in Boone County (\$268.64) – on his purchase of the Nissan.

8. Hutson timely appealed the Director’s final decision.

### **Conclusions of Law**

We have jurisdiction to hear Hutson’s complaint. Section 621.050.1.<sup>2</sup> Hutson has the burden to prove he is not liable for the amount that the Director assessed. Sections 621.050.2

---

<sup>1</sup> There is no evidence in the record where the dealer was located. With no evidence to the contrary, and because Hutson has the burden of proof in this proceeding, we infer that the dealer was located in Missouri.

<sup>2</sup> Statutory references, unless otherwise noted, are to RSMo 2000.

and 136.300.2. Our duty in a tax case is not merely to review the Director's decision, but to find the facts and to determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990). We may do whatever the law permits the Director to do, and we must do what the Director must do. *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., W.D. 1974).

Section 144.070.1, RSMo Supp. 2012, provides:

At the time the owner of any new or used motor vehicle, trailer, boat, or outboard motor which was acquired in a transaction subject to sales tax under the Missouri sales tax law makes application to the director of revenue for an official certificate of title and the registration of the motor vehicle, trailer, boat, or outboard motor as otherwise provided by law, the owner shall present to the director of revenue evidence satisfactory to the director of revenue showing the purchase price exclusive of any charge incident to the extension of credit paid by or charged to the applicant in the acquisition of the motor vehicle, trailer, boat, or outboard motor, or that no sales tax was incurred in its acquisition, and if sales tax was incurred in its acquisition, the applicant shall pay or cause to be paid to the director of revenue the sales tax provided by the Missouri sales tax law in addition to the registration fees now or hereafter required according to law, and the director of revenue shall not issue a certificate of title for any new or used motor vehicle, trailer, boat, or outboard motor subject to sales tax as provided in the Missouri sales tax law until the tax levied for the sale of the same under sections 144.010 to 144.510 has been paid as provided in this section or is registered under the provisions of subsection 5 of this section.

Section 144.069 provides:

**All sales of motor vehicles, trailers, boats and outboard motors shall be deemed to be consummated at the address of the owner thereof**, and all leases of over sixty-day duration of motor vehicles, trailers, boats and outboard motors subject to sales taxes under this chapter shall be deemed to be consummated unless the vehicle, trailer, boat or motor has been registered and sales taxes have been paid prior to the consummation of the lease agreement at the address of the lessee thereof on the date the lease is consummated, **and all applicable sales taxes levied by any**

**political subdivision shall be collected on such sales by the state department of revenue on that basis.**

(Emphasis added). Thus, when the purchaser of a motor vehicle registers that vehicle, he or she must pay all applicable taxes, including all sales taxes levied by a political subdivision. The local sales taxes are determined by the owner's address because § 144.069 deems any such sale to be consummated there.

Finally, § 32.087.13, RSMo Supp. 2012, provides:

**Local sales taxes** imposed pursuant to the local sales tax law on the purchase and sale of motor vehicles, trailers, boats, and outboard motors shall not be collected and remitted by the seller, but **shall be collected by the director of revenue at the time application is made for a certificate of title, if the address of the applicant is within a taxing entity imposing a local sales tax under the local sales tax law.**

(Emphasis added). Hutson lived within the City of Columbia when he registered the Nissan. The City of Columbia imposed a higher local sales tax than Boone County on the purchase of motor vehicles. Hutson paid local sales tax at Boone County's lower rate because that is what the license office told him to pay.

Hutson registered his vehicle and paid the tax, believing he had discharged his duty. Two years later, he received a notice telling him he owed additional tax. This was, undoubtedly, an unpleasant surprise. Although the notice of assessment did not so state, his underpayment of local sales tax may have been due to a mistake made by the license office. Given that, Hutson believes the license office should be responsible for paying the additional taxes. It is not difficult to empathize with this sentiment.

But we are unable to simply excuse Hutson's liability for the additional tax. Because this Commission was created by state statutes, we have only such authority as the statutes give us. *State Bd. of Reg'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974). Neither the Director, his employees, nor this Commission has the power to change the

law. *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985). The law provides that all applicable sales taxes, including all local sales taxes, must be paid when a vehicle is registered. Hutson did not pay the Columbia local sales tax when he registered the Nissan. He must do so now. He is entitled to a credit against this amount of \$268.64, the amount he paid for Boone County's local sales tax.

### **Summary**

Hutson is liable to pay the assessment of \$477.58, additional local sales tax owed to the City of Columbia, on his purchase of the Nissan.

SO ORDERED on April 18, 2013.

/s/ Karen A. Winn

KAREN A. WINN  
Commissioner